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Regulatory Permitting and Endangered Species Act Litigation

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

23 September 1997

REPLY TO
ATTENTION OF:

CECC-K (27-40)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Regulatory Permitting and Endangered Species Act Litigation

1. Please be aware that I have noticed a current trend in some cases over an issue between the U.S. Army Corps of Engineers (Corps) and the Department Interior (DoI) relating to the Corps' permitting of a regulated activity under Section 404 of the Clean Water Act, and DoI's interpretation of Section 7 of the Endangered Species Act and its implementing regulations. The cases or Notices of Intent that I have seen involve the breadth of the review process for the permitting of the regulated activity, and the extent to which secondary or tertiary effects on endangered species must be analyzed. It is my understanding that Department of the Army and DoI policy representatives intend to work together to reach an agreement on how to handle this issue for the United States as a whole.

2. In order to monitor such cases, and because CMIS II is currently not able to provide consistent information and the Corps' New Matter Tracking System is not yet available, I am requesting notification of any pending, current, or newly filed cases involving a permitted activity and an Endangered Species Act claim (of particular note are any chip mill cases where a permit is being sought and related endangered species claims are being made). The notifications should include the name of the case, the Court of Record, a brief synopsis of the case, the current status, and a point of contact. The notice may be sent via e-mail, fax or mail, and updates (as the status changes) should be done, so that CECC-K knows the current status, or existence, of a case at a given time. Once the Corps' New Matter Tracking System is functional, I do not anticipate that such notifications will continue to be necessary; however, policy considerations may cause such cases to be considered nationally significant and/or precedential, so Headquarters may become more directly involved in their oversight in the future. Point of Contact for this action is Tracy Gruis, who may be reached at 202/761-8521.

FOR THE COMMANDER:

/s/ (Newt Klements)

for LESTER EDELMAN
Chief Counsel

Send comments to: [Webmaster](#)
Revised: 24 September 1997